TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #07-372

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from September 2, 2009, through October 2, 2009, on IDEM's draft rule language. IDEM received comments from the following parties:

American Electric Power (AEP)
Bruce Carter Associates (BSA)
Bingham McHale on behalf of CASE Coalition (CASE)
Eli Lilly and Company (ELC)
Indiana Utility Group (IUG)

Following is a summary of the comments received and IDEM's responses thereto.

General

Comment: This rulemaking should be combined with the rulemaking initiatives at LSA Document #09-493 (Development of Amendments to Rules concerning the Air Permit Review Rules: Near Term). Both rulemakings are intended to correct, clarify, and resolve certain consistency issues. This rulemaking does not attempt to resolve all issues raised by U.S. EPA and therefore it is not clear why this rulemaking is essential at this time. If this rulemaking proceeds, the commenter believes it should be limited to only those changes required by U.S. EPA for federal approvability. (IUG) (AEP)

Response: This rulemaking was started before the Article 2 Initiative rulemakings to clean up permitting rules based on changes to permitting requirements at the federal level and to address changes requested by U.S. EPA in order to receive federal approval of the air permitting rules. Since the time this rulemaking was started it was determined that some changes requested by U.S. EPA needed extensive discussion with U.S. EPA and external parties and that it was better to move forward with this rulemaking without addressing all concerns given that IDEM had already planned to address the permitting rules at a broader level with the Article 2 Initiative rulemakings. The department believes it makes sense to move forward with this rulemaking without combining it with the near term Article 2 (09-493) rulemaking because this rulemaking is farther along and will clean up the non-controversial permitting rule changes sooner and provide closure on numerous approvability issues. There are changes due to the new source review (NSR) reform Federal Register that delete and repeal numerous sections that will provide a more streamlined rule to begin the Article 2 Initiative rulemakings.

Comment: The commenter requests a copy of comments made by U.S. EPA on this rulemaking. (IUG) (AEP)

Response: IDEM does not have a complete list of comments received by U.S. EPA, but a December 2007 letter from IDEM to U.S. EPA that summarized the issues at that time has been

put on the website for the Article 2 Initiative. A significant amount of time has passed since U.S. EPA first provided comments and issues may have changed since then. IDEM will continue to work with U.S. EPA on identifying their concerns and document them as part of this rulemaking process and through the Article 2 Initiative.

Comment: IDEM should consider reserving otherwise repealed sections rather than deleting same and renumbering all subsequent sections given the numerous cross-references to the definition sections and substantive rule citations within Article 2 and throughout all operating permits issued by IDEM. (CASE)

Comment: The commenter recommends that where IDEM deletes the provisions of a rule, it should denote that the section, subsection, or clause is reserved instead of renumbering the subsequent section, subsection, or clause, etc. Changing rule references can lead to permits with incorrect rule references. (ELC)

Response: The rules and sections repealed in this rulemaking will remain repealed and cannot be used again. IDEM understands the concern with renumbering sections within a rule, but according to the Indiana Administrative Code (IAC) formatting requirements, anything below the section level cannot be reserved or repealed.

Definitions and General Provisions

Comment: The commenter supports examining the following definitions to study whether revisions could streamline permitting processes by providing clarity to existing rules and promoting consistent application: facility, source, emission unit, potential to emit, modification, and construction. (IUG) (AEP)

Response: IDEM agrees that the permit rules should contain consistent, clear definitions and will address this issue in the Article 2 Initiative rulemakings.

Comment: In 326 IAC 2-1.1-3, striking the phrase "including the following" and replacing with "as follows" is overly restrictive. Replacing these phrases tend to limit the types of activities that could be subject to the rule. The intent of the phrase "including the following" is to introduce a list of example activities that would be subject to the rule. The implication is that similar activities will also be subject to the rule. Changing the phrase as proposed tends to limit the applicability of the rule to only the activities specifically listed. For activities that are not listed, the rule would no longer apply. The lists are not comprehensive and because some similar technologies which may be used in the future have not yet been developed. The commenter does not believe such changes are required for federal applicability *[sic]* and IDEM should not make this type of change. (IUG) (AEP)

Response: U.S. EPA has identified this as an approvability issue and recommended this change. U.S. EPA is concerned that if the list is not specific, that there may be activities included in implementation of the rules that U.S. EPA would not approve.

Comment: The definition of "major modification" in 326 IAC 2-1.1-1(3) needs to be amended to clarify that it does not apply to every modification at an existing major source

subject to 326 IAC 2-2 or 326 IAC 2-3. This could be accomplished by simply referring to the definitions of "major modification" currently found in 326 IAC 2-2-1(ee) and 326 IAC 2-3-1(z). (CASE)

Comment: The definition of "major modification" in 326 IAC 2-1.1-1(3) should be revised as follows:

"(3) "Major modification" means a **major** modification ~~to an existing major source to which either 326 IAC 2-2 or 326 IAC 2-3 applies~~ **as defined in 326 IAC 2-2-1(ee) or 326 IAC 2-3-1(z)**." (ELC)

Response: IDEM reviewed inclusion of this term in 326 IAC 2-1.1-1 and determined that it is not needed since this term is also defined in 326 IAC 2-2 and 326 IAC 2-3. Therefore, IDEM is deleting the definition of "major modification" at 326 IAC 2-1.1-1(3).

Comment: The definition of "plant-wide applicability limit" in 326 IAC 2-1.1-1(11) of the draft rule language should refer to or be consistent with the definitions of this term in 326 IAC 2-2.4-2(j) and 2-3.4-2(j). The same term "plant-wide applicability limit" or "plantwide applicability limitation" should be used consistently throughout the rules to eliminate confusion. In any event, requirements or standards should not be included in the definition of "plant-wide applicability limit" and should instead be included in the appropriate permit applicability rule. (CASE)

Comment: The definition of "plant-wide applicability limit" in 326 IAC 2-1.1-1(11) of the draft rule language should be revised as follows:

"(11) "Plant-wide applicability limit" **has the meaning assigned to it in 326 IAC 2-2.4-2(j) or 326 IAC 2-3.4-2(j)** ~~means a plant-wide enforceable emission limitation established for a stationary source such that subsequent physical or operational changes resulting in emissions that remain less than the limit are excluded from preconstruction or modification approval or operating permit revision requirements under this article.~~" (ELC)

Response: IDEM reviewed inclusion of this term in 326 IAC 2-1.1-1 and determined that it is not needed since this term is also defined in 326 IAC 2-2-1, 326 IAC 2-2.4, and 326 IAC 2-3.4. "Plant-wide applicability limit" in 326 IAC 2-1.1-1 was added to the permit rules before the plantwide applicability limitations (PAL) language was added for NSR reform and is linked to the emission cap provisions that are being deleted in this rulemaking. Therefore, IDEM is deleting the definition of "plant-wide applicability limit" at 326 IAC 2-1.1-1.

Comment: There may be other terms defined in 326 IAC 2-1.1 that have their origins in the PSD and nonattainment NSR permitting rules and for which IDEM intends these words to have the same meaning. IDEM should cross-check all the definitions in 326 IAC 2-1.1-1 for terms that are intended to mean the same as in the major NSR rules and revise the definitions in the same manner that have been suggested for "major modification" and "plant-wide applicability limit". (ELC)

Response: IDEM reviewed the terms in 326 IAC 2-1.1-1 and determined that "minor modification" and "major source" are also not needed in this section. Therefore, IDEM is deleting the definition of "minor modification" and "major source" in 326 IAC 2-1.1-1 for

preliminary adoption. Definition will also be reviewed as part of the Article 2 Initiative rulemaking and additional changes may be identified at that time.

Comment: The commenter supports modifications to the current permitting exemptions rule at 326 IAC 2-1.1-3. The current permitting exemptions rule, while helpful, does not allow for real-time decision making in extreme circumstances. (IUG) (AEP)

Comment: The commenter supports modifications to the current permitting exemptions rule at 326 IAC 2-1.1-3 to clarify that those units and activities specifically enumerated are fully exempt from permitting. (IUG) (AEP)

Response: IDEM believes these may be approvability issues. These issues require more extensive discussion and are outside the scope of this rulemaking. They will be included as part of the Article 2 Initiative rulemaking.

Comment: The revisions in 326 IAC 2-1.1-3(h)(2)(A) and (B) of the draft rule language need to include further amendments to address the changes brought about by the NSR reform rules. Delete the phrase "result in an increase in the potential to emit" from 326 IAC 2-1.1-3(h)(2) and revise 326 IAC 2-1.1-3(h)(2)(A) and (B) as follows:

"(A) constitute a major modification pursuant to 326 IAC 2-2-1(dd);

(B) constitute a major modification pursuant to 326 IAC 2-3-1(y)."

Additionally, include the phrase "result in an increase in the potential to emit that" at the beginning of 326 IAC 2-1.1-3(g)(2)(C) through (K) as appropriate, or otherwise restructure the rule to have the same effect. (CASE)

Comment: The existing language in 326 IAC 2-1.1-3(h)(2) improperly refers to an "increase in the potential to emit" as a basis for barring some changes to existing equipment from eligibility as an exempt project under 326 IAC 2-1.1-3. In particular, the words "increase in the potential to emit" should not be applicable to the changes which are described in 326 IAC 2-1.1-3(h)(2)(A) and (B), which are references to changes that might otherwise trigger major NSR. The primary basis for triggering major NSR, as reflected in changes in U.S. EPA and IDEM rules, is an increase in actual emissions above the major NSR significance thresholds. 326 IAC 2-1.1-3(h)(2) should be revised to reflect the current U.S. EPA and IDEM rules. Because the other items in 326 IAC 2-1.1-3(h)(2) may or may not be contingent upon increases in potential to emit, it is not clear to the commenter how this section of the rule should be revised. Nonetheless, IDEM should clarify that the two parts of this section that are related to major NSR should be revised so that the language is consistent with major NSR requirements. (IUG) (AEP)

Response: This issue requires more extensive discussion and will be included as part of the Article 2 Initiative rulemaking.

Comment: The definition of "minor physical changes" was deleted under 326 IAC 2-1.1-1(6), however, 326 IAC 2-1.1-3(h)(2) still cites "minor physical changes." Therefore, it is not clear what is meant by "other minor physical changes." (IUG) (AEP)

Response: While the definition of "minor physical change" was deleted the content was moved from the definition section to 326 IAC 2-1.1-3(e)(46)(N) through (e)(46)(R) to be included in the list of other types of miscellaneous equipment and activities. The draft rule

language in the second notice included changes in 326 IAC 2-1.1-3(h)(2) to clarify "other minor physical changes as described in subsection (e)(46)(N) through (e)(46)(R)." This suggestion was made by U.S. EPA and IDEM agrees with the change.

Comment: 326 IAC 2-1.1-3(h)(2)(C) is no longer needed and should be deleted. This language may have been adopted before U.S. EPA and IDEM clarified that the section 112(g) new source toxics control regulations applied only to construction or reconstruction of a major source of HAPs that is not otherwise subject to a MACT standard. The types of operational and minor physical changes eligible for exemption pursuant to 326 IAC 2-1.1-3(h)(2) would not be extensive enough to qualify as construction or reconstruction of a major source of HAPs. (ELC)

Response: IDEM believes that this provision is still needed and has not made the change as requested. There are instances where the change may trigger applicability under 326 IAC 2-4.1 because of the definition of reconstruction under the MACT standard, but the emissions increase is still low enough to otherwise qualify for the exemption under 326 IAC 2-1.1-3(h)(2).

Emissions Cap Program

Comment: The emissions cap program, 326 IAC 2-1.1-12, proposed for repeal, is a good program for offering permitted facilities flexibility. The commenter understands that U.S. EPA has commented that the program is not consistent with Indiana's new source review (NSR) program and that the rule has not been used by Indiana facilities due to these concerns. The commenter has met with several groups (U.S. Steel Gary Works, Arcelor Mittal, and Midcontinent Coal and Coke) affected by this proposal and is offering comments that will narrow the scope of the original rule language to make the rule more specific to facilities that need permit flexibility to operate. In addition, the commenter provided language that will require collocated facilities to coordinate permitting action to ensure that administrative Title 5 facilities and major sources that they support are in agreement on proposed permit changes. Specific changes are not included in the comment, but the commenter is willing to work with IDEM to create rule language changes that address this proposal. (BCA)

Comment: The elimination of the emissions cap program removes permitting flexibility and should be retained. The program should be retained in this rulemaking and modified in the Article 2 Initiative rulemakings. (IUG) (AEP)

Response: There is insufficient time to create a new emissions cap program to address the proposed repeal of the current program at 326 IAC 2-1.1-12 in this rulemaking, but IDEM will continue to work with stakeholders on this issue during the Article 2 Initiative rulemakings. IDEM does not wish to delay this rulemaking and the Article 2 Initiative rulemakings that will be closely following this rulemaking provide an opportunity to discuss an emissions cap program. Since the program is not being used in its current form and will need to be modified, it is not necessary to keep as a placeholder in the current rules.

PSD Rules

Comment: The last sentence of the proposed amendments to 326 IAC 2-2-8(b)(6)(B) should be changed as follows:

"For a project for which a reasonable possibility occurs only within the meaning of this subsection (b)(6)(B), and not also within the meaning of subsection (b)(6)(A), then subsections (b)(2) through (5) do not apply to the project." (CASE)

Comment: The last sentence of the proposed amendments to 326 IAC 2-3-2(l)(6)(B) should be changed as follows:

"For a project for which a reasonable possibility occurs only within the meaning of this subsection (l)(6)(B), and not also within the meaning of subsection (l)(6)(A), then subsections (b)(2) through (5) do not apply to the project." (CASE)

Response: The change requested by the commenter was not made. Proposed language is written based on language style per the IAC formatting requirements.

Reasonable Possibility Language

Comment: Proposed additions to 326 IAC 2-2-8(b)(6) and 326 IAC 2-3-2(l)(6) appear to incorporate the "reasonable possibility" rule (72 FR 72607). The Obama administration has granted a petition for reconsideration of this rule and IDEM should wait for a final decision by U.S. EPA before incorporating this language. (AEP) (IUG)

Comment: If IDEM decides to adopt a version of the "reasonable possibility" rule, the rule as written should be revised to clarify that it only applies for projects that do not trigger NSR and have projected actual emission increases (in the context of the actual-to-projected-actual emission increase analysis) of 50% of the significance thresholds. As drafted, the proposed language is not clear whether recordkeeping requirements apply to all projects, even when they do not have a "reasonable possibility" (as defined by the U.S. EPA "reasonable possibility" rule) of triggering significance thresholds. (IUG) (AEP)

Response: IDEM committed to U.S. EPA to address this issue and it is still in effect even though it is being reconsidered, so IDEM will retain it and consider changes based on the outcome of the reconsidered petition.

Title V and Insignificant Activities

Comment: In 326 IAC 2-7-1(12), definition of "emergency", delete the comma after the word "source." (CASE)

Response: The change was made as requested.

Comment: In 326 IAC 2-7-1(21), the definition of "insignificant activity" should not include standards or requirements. Delete the standards or requirements contained 326 IAC 2-7-1(21)(A) through (D) and relocate to appropriate parts of rules where needed. (CASE) (ELC)

Comment: For example, the language that currently resides in 326 IAC 2-7-1(21)(H), which states that detailed information regarding insignificant activities is not required in permit applications submitted under Rule 7 or Rule 8, should be relocated to the sections of the permit rules where that information is relevant: 326 IAC 2-7-4 for Title V permit applications; 326 IAC 2-7-10.5(c) for source modification permit applications, and so on. (ELC)

Comment: In 326 IAC 2-7-1(40), the definition of "trivial activity" should not include standards or requirements. Delete the standards or requirements contained 326 IAC 2-7-1(40)(A) and (B) and insert same into the appropriate permit applicability rules. (CASE)

Response: As a general rule, IDEM agrees that standards or requirements should not be included in definitions. Since addressing this issue would include extensive reworking of rule language it will be considered as part of the Article 2 Initiative rulemaking.

Comment: The commenter supports discussions regarding the existing insignificant activity list to clarify that the definition of insignificant activity in relation to applicable compliance monitoring requirements. This rulemaking should not delete existing insignificant activities. The commenter requests a detailed explanation as to the concern associated with maintaining insignificant activities listed in the draft rule at 326 IAC 2-7-1(21)(K)(xxix) (Woodworking), 326 IAC 2-7-1(21)(K)(xxiii) (Grinding and machining operations), and 326 IAC 2-7-1(21)(K)(xxi)(BB) (Emergency generators). (IUG) (AEP)

Response: IDEM is not deleting any existing insignificant activities in this rulemaking. U.S. EPA has expressed concern with the unlimited nature of certain insignificant activities. No changes to the insignificant activities mentioned in this comment are included in this rulemaking, so that further discussion with U.S. EPA and stakeholders can take place. This issue will be considered in the Article 2 Initiative rulemakings.

Comment: In the proposed 326 IAC 2-7-5(15), the first proposed insertion of the phrase "Part 70 permit" is misplaced. This portion of the rule focuses on a source modification, not a permit modification. Do not include this amendment. (CASE) (ELC)

Comment: In this part of the rule, the phrase "specifically identified modifications" refers to source modifications that might require source modification approvals under 326 IAC 2-7-10.5, not a Part 70 permit modifications pursuant to 326 IAC 12. (ELC)

Response: U.S. EPA requested this change to be clear that the language is referring to Part 70 permits.

Comment: Consistent with 40 CFR 70.6, include the following at the end of the first phrase of 326 IAC 2-7-6(5)(C):

"(provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable)". (CASE)

Response: The change was made as requested to be consistent with the federal rule.

Comment: In 326 IAC 2-7-6(5)(C)(iii)(AA), delete the phrase "and take it into account in the compliance certification." It is awkward and confusing. The proposed amendments clearly state that the compliance status (continuous or intermittent) be based on the method or means designated in 326 IAC 2-7-6(5)(C)(ii). (CASE)

Response: This language is taken from 40 CFR 70.6; therefore, IDEM has retained the language for consistency with the federal rule.

Comment: Confirm that the changes to 326 IAC 2-7-6(5)(C) are merely clarifications to the existing rule and confirm that permittees will be able to continue to use a Short Form Annual Compliance Certification in accordance with IDEM's existing non-rule policy document (NPD), Air-007-NPD-R2, *Guidelines for Submittal and Review of Annual Compliance Certifications*

under the Federally Enforceable State Operating Permit (FESOP) and Part 70 Permit Programs. (CASE)

Response: The changes made to 326 IAC 2-7-6(5) were made to be consistent with federal changes at 40 CFR 70.6. Permittees can continue to use the NPD as long as it is in effect. IDEM is not aware of any problems with the NPD due to the changes in 326 IAC 2-7-6(5).

Comment: The commenter objects to the way IDEM included references to the federal compliance assurance monitoring (CAM) program in 326 IAC 2-7-5 and 326 IAC 2-7-6 along with other changes that could create conflicting monitoring requirements based on state rules that do not appear to have a strong basis in Indiana law. As written, revisions to 327 IAC 2-7-5(3) suggest that CAM alone may be sufficient to satisfy applicable monitoring requirements, and that other requirements may apply in addition to CAM. However, CAM itself was designed "[t]o implement the statutory requirement for enhanced monitoring," (62 FR 54899, 54901). The commenter requests that 326 IAC 2-7-5(3) be revised to reflect that CAM is sufficient, by itself, to provide the necessary enhanced monitoring requirements. (AEP) (IUG)

Comment: The proposed language added to 326 IAC 2-7-6(5) seems to suggest that IDEM has the authority to impose compliance monitoring conditions in excess of CAM. In fact, the proposed text seems to indicate that IDEM could impose compliance monitoring conditions in excess of those identified in 326 IAC 2-7-5(3). Neither of these provisions should be read to grant IDEM authority to impose requirements more stringent than federal rules that were designed to implement the Clean Air Act. This rulemaking is an inappropriate venue for a change of this nature and if IDEM should desire to make such a change, it should be moved to the Article 2 Initiative rulemaking for proper discussion among the stakeholders. (AEP)

Comment: Any reference to CAM should include a reference to the Indiana rules, which slightly modify CAM. (IUG) (AEP)

Response: IDEM feels that these comments address interpretation issues that warrant more discussion as part of the Article 2 Initiative rulemaking. However, the proposed changes match the changes made by U.S. EPA to 40 CFR 70. The federal CAM rules were incorporated by reference at 326 IAC 3-8. IDEM does not believe there were any changes to CAM in the incorporation. Therefore, IDEM has not revised the draft rule language.

Comment: In 326 IAC 2-7-1(21)(D), the draft rule provides IDEM with the authority to require the source to update its lists of insignificant activities as part of its annual compliance certification. However, this requirement contradicts 326 IAC 2-7-1(21)(C) which states "activities defined as insignificant in this subdivision or trivial in subdivision (4) need not be included in a source's annual emission statement required by 326 IAC 2-6." The requirement to list insignificant activities as part of the annual compliance certification should be deleted. (IUG) (AEP)

Response: IDEM does not believe there is a conflict because 326 IAC 2-7-1(21)(D) only requires the source to update the list of insignificant activities and is separate from the provision exempting these types of activities from emissions reporting.

Comment: In 326 IAC 2-7-1(21)(D), the draft rule reads that an insignificant activity which triggers "new" compliance monitoring requirements constitutes a modification under 326 IAC 2-7-10.5 and 326 IAC 2-7-12. Changes to compliance monitoring, recordkeeping, or reporting requirements due to the addition of insignificant activities should not trigger a modification under 326 IAC 2-7-10.5 and 326 IAC 2-7-12. The commenter requests that this issue be discussed in the Article 2 workgroup meetings. (IUG) (AEP)

Response: IDEM acknowledges the request and will address this issue in the Article 2 Initiative rulemaking.

FESOP

Comment: The clarifications to the FESOP significant permit revisions rule proposed in 326 IAC 2-8-11.1(g) should instead be incorporated into 326 IAC 2-8-11.1(f). (CASE)

Response: IDEM agrees that it may be appropriate to move the language in subsection (g) to subsection (f), but since there may be future changes to what is considered a significant permit modification this suggestion will not be addressed in this rulemaking. IDEM is proposing to delete 326 IAC 2-8-11.1(g)(1) and (3) since it was in reference to emissions caps, which are being deleted and the language is therefore, no longer necessary.